

Day One of Public Hearings

Session: An overview of those who miss out and fall through the cracks of a fair go for all

Presentation by Bill Mitchell, Convenor of the Human Rights Network

1–3 July 2009, Great Hall at Parliament House in Canberra

I represent the National Association of Community Legal Centres. The NACLCLC represents around 200 community legal centres in Australia.

In 2007-2008 CLCs provided:

- 211,620 legal advices
- representation in 37,750 cases
- 2,567 community legal education projects and
- 875 law reform projects

The work of CLCs is roughly:

- 60% civil law
- 30% family law
- 10% criminal law

CLCs leverage 23 million dollars in pro bono assistance each year.

CLCs span over 35 years of human rights work, from the early days of Fitzroy Legal Centre (1972).¹

Community legal centres are able to offer effective and creative solutions to legal problems based on their experience within their community. It is the relationship with their community that distinguishes CLCs from other legal services.

CLCs undertake community development, community legal education and law reform projects that are based on client need, that are preventative in outcome and that strengthen the community they serve.

The clients of CLCs are those who face economic, social or cultural disadvantage and whose life circumstances are often affected entirely by their legal problem.

Our CLCs are located in most major metropolitan centres and in rural, regional and remote places:

- Lismore, Katoomba and Broken Hill in NSW
- Katherine and Alice Springs in NT
- Toowoomba, Goondiwindi and Mackay in QLD

¹ Other early centres included Caxton Legal Centre (1976), Redfern Legal Centre (1977), Sussex Street Community Law Service (1978).

- Port Pirie, Berri and Mt Gambier in SA
- Launceston, Hobart and Devenport in TAS
- Ballarat, Albury/Wodonga and Bendigo in VIC
- Kunnanurra, Geraldton and Kalgoorlie in WA

These are the places that the consultation visited to gauge how Australian view the state of play.

Today's meeting aligns closely with the first term of reference...How are Human Rights and Responsibilities Presently Protected and Promoted in Australia?

We should begin by accepting that human rights are those rights that allow us to live with dignity. They are generally accepted to be those set out in the International Bill of Rights and associated conventions.

We say that human rights are not adequately protected or promoted in Australia.

We as a nation have promised to protect the rights contained in no less than 7 Conventions.²

The world community expects us to honour these commitments.

Sadly, there are many gaps between the promises we make as a nation and the actions we take as a nation.

I'll repeat that, the promises we make and the actions we take...

The NACLC, along with others, have identified these gaps to the highest levels including in providing NGO shadow reports in respect of the ICCPR³ and ICESCR⁴.

A common thread in both shadow reports is the lack of entrenchment.

The reports point out that many fundamental rights are not afforded to Australians. That is, many of those rights have not found their way into Australian domestic law.

To Australians the conventions we have signed are not reality, but a glimpse of what should be.

It is our view that all of Australia's human rights obligations under international human rights law should be incorporated and protected under Australia's domestic law.

There seems no doubt to us that there is a need for a comprehensive federal law that sets out fundamental human rights.

² Universal Declaration of Human Rights ("**UDHR**" or "**Declaration**"), International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), International Convention on the Elimination of all Forms of Racial Discrimination (**CERD**), Convention on the Elimination of all Forms of Discrimination against Women (**CEDAW**), Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**), Convention on the Rights of the Child (**CRC**), Convention on the Rights of Persons with Disabilities (**CRPD**)⁸

³ Freedom, Respect, Equality, Dignity: Action - NGO Submission to the Human Rights Committee (September 2008) (updated March 2009)

⁴ Freedom, Respect, Equality, Dignity: Action - NGO Submission to the Committee on Economic, Social and Cultural Rights (April 2008) (updated April 2009)

We suspect the lion's share of the almost 40,000 submissions will take a similar position.

We struggle to understand the position of those who cannot see the gaps; perhaps they are blinded by the rhetoric of a few. We would encourage them to read the shadow reports for themselves and make their own mind up.

We also struggle to understand those whose fundamental concern seems to be the rights of others, or perhaps their fundamental concern is simply "others".

What possible reason could we have to deny someone a right to fair trial?

Can we understand that the loss of this right can lead to the loss of personal liberty and security, which then in turn leads to the loss of most other rights including right to family, work, education and so on...

The rights are indivisible and interdependent and we can't cherry pick which inherent rights we will protect and which we will ignore. That would be akin to saying we don't respect your right to reach your full potential as a human. We will educate you to become a writer but will not let you publish any of your work.

We don't need to put ourselves in the shoes of others to understand, we have been there for 35 years. 35 years of frontline experience in sharing the struggle of those denied access to their fundamental rights.

How can I even begin to catalogue the gaps in those 250,000 matters we see each year – it simply can't be done in the time we have today.

GAPS IDENTIFIED BY SHADOW REPORTS TO ICCPR AND ICESCR

Some key gaps identified in ICCPR included:

Self-determination (art 1, ICCPR)

Equal treatment (art 3, ICCPR)

Permissible derogations (art 3, ICCPR)

Torture or cruel punishment (arts 7,10, ICCPR)

Slavery, servitude, forced labour (art 8, ICCPR)

Arbitrary detention (art 9, ICCPR)

Free movement (art 12, ICCPR)

Procedural rights against expulsion (art 13, ICCPR)

Fair trial (art 14, ICCPR)

Retroactive criminal laws (art 15, ICCPR)

Privacy (art 17, ICCPR)

Thought, conscience, religion (art 18, ICCPR)

Expression (arts 19, 20, ICCPR)

Assembly and association (arts 21, 22, ICCPR)

Protection of the family, children (arts 23, 24, ICCPR)

Political participation (art 25, ICCPR)

Minority Rights (art 27, ICCPR)

Federalism (art 50, ICCPR)

Some key gaps identified in respect of the ICESCR:

- Work (arts 6,7, ICESCR)
- Social security (art 9, ICESCR)
- Family (art 10, ICESCR)
- Adequate standard of living (art 11, ICESCR)
- Highest attainable standard of physical and mental health (art 12, ICESCR)
- Education (arts 13, 14, ICESCR)
- Cultural and scientific progress rights (art 15, ICESCR)

Examples of Gaps in Current Human Rights Protections

Freedom of Expression (art 19, 20, ICCPR)

Very limited scope and only implied

- Right to a fair hearing (art 14, ICCPR)
- Legal representation very limited
- Redress for wrongful imprisonment very limited
- Freedom from torture or cruel treatment (art 7, 10, ICCPR)
- Institutional Abuse and Neglect
- Restrictive Practices
- Rights to Privacy (art 17, ICCPR)

Limited coverage and rights

Arbitrary detention (art 9, ICCPR)

Freedom of Movement (art 12, ICCPR)

Restrictive practices

Freedom of Assembly (art 21, ICCPR)

Protection of Children (art 24, ICCPR)

Age of criminal responsibility